

No. 15923

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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C. H. TROWLER, doing business as STANDARD MAPS,  
*Appellant,*

*vs.*

M. PENN PHILLIPS and M. PENN PHILLIPS, doing business as M. PENN PHILLIPS ASSOCIATES; WESTERN WOODS ASSOCIATES; WILLIAM HARWICK, JOHN KAGAN and BERT B. BRANT, doing business as HARWICK, KAGAN & BRANT; FRED W. AUSTIN, WILLIAM R. BLUMFIELD and HAROLD W. SIEDE, Copartners, doing business as INDUSTRIAL LITHOGRAPHERS,

*Appellees.*

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Appeals From the United States District Court for the  
Southern District of California, Central Division.

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Brief of Appellees, M. Penn Phillips and M. Penn Phillips, Doing Business as M. Penn Phillips Associates; Western Woods Associates; William Harwick, John Kagan and Bert B. Brant, Doing Business as Harwick, Kagan & Brant.

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**FILED**

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Statement of Pleadings and Facts Re Jurisdiction.

PLEADINGS: Complaint in 211-57-HW [R. 3]; Complaint in 219-57-HW [R. 7]; First Amended Complaint in 221-57-HW [R. 27]; Answer and Counterclaim in

211-57-HW [R. 14]; Answer in 217-57-HW [R. 11]; Answer in 221-57-HW [R. 32]; Affidavit of Plaintiff-Appellant [R. 39]; Motion to Dismiss, for Judgment on the Pleadings and for Summary Judgment in 211-57-HW, 221-57-HW and 219-57-HW [R. 44]; Stipulation and Order for Dismissal of Counterclaims in 211-57-HW [R. 46]; Findings of Fact, Conclusions of Law and Judgment in 211-57-HW [R. 47]; Findings of Fact, Conclusions of Law and Judgment in 219-57-HW [R. 50]; Findings of Fact, Conclusions of Law and Judgment in 221-57-HW [R. 53]; Notice of Appeal in 211-57-HW, 219-57-HW and 221-57-HW [R. 55].

JURISDICTION: Four actions for copyright infringement are herein consolidated [R. 38]. Jurisdiction of the District Court was invoked under 28 U. S. C. 1338(a), and this Court has jurisdiction under 28 U. S. C. 1291.

## ARGUMENT.

### I.

#### Introduction.

The recitals in Appellant's affidavit [R. 39], filed pursuant to the Court's order at the pre-trial conference [R. 38], assumed for the purpose of these Appellees' motions to be true, and the applicable rules of law require an affirmation of the judgments in the District Court. Appellant correctly states the central issues presented by this appeal (Appellant's Brief 4) as whether, under the facts set forth in Appellant's affidavit, the District Court was justified in finding that nothing original or novel was contributed by Appellant and whether, consequently, Appellant is not entitled to copyright in the map "for want of original work" [R. 48-49, 51, 54]. Appellant's brief recites that he "judiciously selected" certain elements from each of the public domain maps which were his only source, added certain additional elements as a result of his personal observation, "drove extensively" in the area and "personally verified" the accuracy of the elements contained in the map, and made certain changes in the map as a result of such verification (Appellant's Brief 4, 5). In analyzing the effect to be given Appellant's efforts in creating the document of whose infringement he complains, it would be helpful to consider, in Appellant's own language wherever possible, the precise nature of his "judicious selection," additional elements, personal verification, and the making of certain changes.



## II.

### **Appellant's Affidavit Shows on Its Face That He Performed No Significant Original Work in Preparing His Maps, but on the Contrary, Copied It From Public Domain Material.**

Appellant's affidavit [R. 39] sets forth clearly enough his procedure in compiling his maps, and nowhere contains any substantial indication that anything original or novel was created by him, to wit:

1. Appellant indicated that he purchased a book of recorded tract sheets containing fifty-two sheets of subdivision maps, of record in the office of the Recorder of the County of San Bernardino, fifty-five sheets describing the county road system, a map of San Bernardino County and various other maps issued by the United States Government, the State of California and the Atchison, Topeka and Santa Fe Railroad. Except for the railroad maps, all of this material was published by the Federal or State Government, or was a matter of public record. Appellant then took all of the recorded tract maps and placed them together to form one giant map [R. 39 and 40].

2. Appellant recites that he had to determine where the boundaries of sections occurred in order to fix the point of joinder of the individual tract maps, yet the individual tract maps of the area, as of every approved subdivision tract map, have clearly indicated thereon, as Appellant's affidavit sets forth, lot numbers and repeated street names, so that the boundaries of each can be determined very simply by observation [R. 40].

3. It appears from Appellant's affidavit [R. 40-41] that Appellant added nothing to the actual maps themselves but instead only eliminated certain material which was on the existing recorded tract maps. Surely it takes



no great effort or originality to include the name of a street only once [although in fact, Appellant's Exhibit 1 contains the names of many streets repeated three or four times: *e.g.*, "Lemon Street" is repeated three times, "Muscatel Street," "Mauna Loa Street" and "Manzanita Street" are each repeated four times, "Palm Street" is repeated three times within one section, "Mojave Street" is repeated five times, once as "Mojave Road," all despite Appellant's claim to have regularized the naming of streets], or to eliminate the numbers of lots, the measurements of the lots, the lot lines, easements, pipe lines and curbs. Appellant surely cannot claim to have exercised originality in the process of retaining some of these features and eliminating others.

4. Except for the sight location of the Old Hotel, the golf course, the Chamber of Commerce Building, the County Hall, the Fire Station and the proposed hotel site, Appellant admits that he obtained all of his information by taking material from other maps [R. 41]. As to these latter appropriations, he relied on his personal observation, but did not indicate that he placed them any more accurately than that [R. 39]. Appellant recited that he is an experienced mapmaker and yet it appears that he verified the material taken from other maps only by comparing the scale distances with his automobile speedometer, and it is significant that he found no variance sufficient to cause him to alter, by so much as one-tenth of a mile, the distances he took from the public record maps [R. 42]. Despite the claim in Appellant's brief (Appellant's Brief 5) that Appellant "made certain changes in the map as a result of such verification," it does not appear from Appellant's affidavit that any changes were made other than those set forth in Paragraph 7 of Appellant's affidavit [R. 42] which are so trifling as to be inconsequential.

5. In short, Appellant's "judicious selection" and arrangement comes down to an inconsistent elimination of certain repetitious naming of streets and the location, by eye, of a few well-known places not included in the tract maps, all subject only to the readings of an ordinary automobile speedometer, a precision tool hitherto little known to map makers. What Appellant did, it appears, is a routine cut-and-paste job on existing public domain material. As it was said in *Amsterdam v. Triangle Publications, Inc.*, 189 F. 2d 104, 106 (3d Cir., 1951):

"Is this exercise of judgment and discretion by the plaintiff the type of original work that is intended to be protected by the Copyright Act? I think not."

### III.

**The Protection of the Copyright Statutes Does Not Extend to Appellant's Maps, Where by His Own Admission, Virtually All of the Material Was Taken From Other Maps and Combined Without Further Original Research.**

A. Prevailing Case Law Indicates That in Order for a Map to Be Copyrightable, the Mapmaker Must Originally Obtain More Than a Modicum of the Information Contained Thereon by Original Work.

1. The case of *Amsterdam v. Triangle Publications, Inc.*, *supra*, is squarely in point. Indeed, it would be difficult to find a set of facts closer to those in the case at bar. In the *Amsterdam* case, plaintiff published and copyrighted in 1932 a map of Delaware County, Pennsylvania, a county which includes suburban Philadelphia. In 1946, the Philadelphia *Inquirer* published the plaintiff's map. The defendant newspaper conceded the copying and the sole question presented by plaintiff's appeal from a

dismissal below was the copyrightability of the plaintiff's map. Among the findings of fact were the following:

(a) The plaintiff studied every map of Delaware County he could find. Plaintiff made no actual survey or investigation of roads, county lines, township lines, or railroad lines; all this information was obtained from public records or other maps.

(b) Highway numbers were obtained from the State Highway Department.

(c) All the information shown on the plaintiff's map came from maps already in existence, *although none of this information had previously been entered on any one map*. The only exceptions were the names of a few small secondary roads, which were obtained from real estate developers.

“ . . . the plaintiff spent considerable time and effort to assemble and prepare this information for publication, but did very little, if any, original work.” (*Amsterdam v. Triangle Publications, Inc.*, *supra*, at 105.)

2. In reciting with approval a part of the opinion of the District Court Judge in the *Amsterdam* case below (93 Fed. Supp. 79 (U. S. D. C. E. D. Penna. 1950)), the Court said:

“ ‘To be copyrightable a map must be the result of some original work. *Andrews v. Guenther Pub. Co.*, D. C., 60 F. 2d 555, 557; *General Drafting Co., Inc. v. Andrews, et al.*, 2 Cir., 37 F. 2d 54, 56; 34 Am. Jur. 454-455; 18 C. J. S., Copyright and Literary Property, §116, p. 233.

“ ‘*The actual original work of surveying, calculating and investigating that was done by the plaintiff in*

*order to make his map was so negligible that it may be discounted entirely.*

“‘What the plaintiff did was to study the United States Geological Survey Maps, the Pennsylvania Department of Highways Maps, the maps prepared and owned by the various townships and municipalities, and all other maps which he could find. *Primarily, he studied the maps published by governmental authorities.* He then prepared, from the information shown on these maps, a large map of Delaware County. From this large map, he next designed and published the small map involved in this case.

“‘To make his map, *the plaintiff had to determine only what information he was going to use from other maps, the emphasis to be given to that information and the coloring scheme and symbols he was going to use.* When he finished, his map by comparison was a new map that contained some information that was not on any one of his base maps but was collectively on all of these maps.

“‘Is this exercise of judgment and discretion by the plaintiff the type of original work that is intended to be protected by the Copyright Act? I think not.

“‘The location of county lines, township lines and municipal lines is information within the public domain, and is not copyrightable. *Christianson v. West Pub. Co., 9 Cir., 149 F. 2d 202, 203; Sawyer v. Crowell Pub. Co., D. C., 46 F. Supp. 471, 474. Likewise, information in government publications is within the public domain and not subject to copyright.* *Andrews v. Guenther Pub. Co., supra.* Nor can the plaintiff copyright the arbitrary color schemes, symbols or numbers that he uses on his map. *Christianson v. West Pub. Co., D. C., 53 F. Supp. 454, 455.*

“All that remains is the plaintiff’s method of presenting this information. The presentation of ideas in the form of books, movies, music and other similar creative work is protected by the Copyright Act. *However, the presentation of information available to everybody, such as is found on maps, is protected only when the publisher of the map in question obtains originally some of that information by the sweat of his own brow.* Almost anybody could combine the information from several maps onto one map, but not everybody can go out and get that information originally and then transcribe it into a map.

“*The plaintiff’s reputation as a qualified map maker cannot make copyrightable maps for him. He, or his agent, must first do some original work, get more than an infinitesimal amount of original information.* With no reflection whatsoever upon the plaintiff’s ability as a map maker or upon other maps published and copyrighted by the plaintiff, it seems to me that the plaintiff’s map entitled “Map of Delaware County, Pa.” is, for lack or [sic] original work, not subject to copyright.’

“We think there is no doubt that *in order for a map to be copyrightable its preparation must involve a modicum of creative work.* Judge Knox of the District Court for the Southern District of New York so held in *Andrews v. Guenther Pub. Co.*, 1932, 60 F. 2d 555, after reviewing the authorities and we have been referred to no authority to the contrary. Moreover we regard the rule as in accord with the spirit and intent of Article I, Section 8, clause 8, of the Constitution which is the basic authority for the granting of copyrights. Applying the rule to the facts of this case the district court did not err in concluding that the necessary amount of creative work to justify the copyright of the plaintiff’s



map had not been shown. It follows that the district court properly dismissed the complaint.” (Emphasis added; *Amsterdam v. Triangle Publications, Inc.*, *supra*, at 106.)

3. Except for the case of *Christianson v. West Publishing Co.*, 149 F. 2d 202 (9th Cir., 1945), there are no map cases precisely on point in the Ninth Circuit. However, the *Christianson* case was cited with approval in the *Amsterdam* case, *supra*, and affirmed a judgment of dismissal for the defendant on the grounds, at least in part, that the plaintiff’s map did not constitute copyrightable material, in that none of its elements originated with the plaintiff.

The case of *Andrews v. Guenther Publishing Co.*, 60 F. 2d 555 (D. C. S. D. N. Y., 1932), cited by Appellant (Appellant’s Brief 12). relied on in the *Amsterdam* and *Christianson* cases, *supra*, is very much in point. In this case, a complaint by plaintiff was dismissed on the following set of facts:

Plaintiff prepared, published and copyrighted, and defendant admitted copying, a map of North America with an outline of the continents, international boundaries and plaintiff’s own selection of over one hundred of the most important cities, which he designated by different symbols according to their population. The chief point of controversy was whether or not the plaintiff’s map could be the subject of copyright. After an analysis of the facts of the case of *General Drafting Co. v. Andrews*, 37 F. 2d 54 (2nd Cir., 1930), *infra*, the court determined that, whereas a considerable amount of original work had been done by the successful plaintiff in the *General Drafting Co.* case, it had not been done to prepare the map in

question. It was, consequently, not a valid subject of copyright. Plaintiff in the *Guenther Publishing Co.* case performed considerably more original work than Appellant Trowler, and yet it was held insufficient. Plaintiff in the *Guenther Publishing Co.* case took a United States Geographical Survey, prepared from that an outline map of North America, made a tracing from a photostat of the Geographical Survey of the Great Lakes and international boundary lines, eliminated many indentures in the coast line and then placed thereon what he considered to be the principal cities of North America, locating the positions of most of the cities by eye from the original Geographical Survey map, and added five other cities by eye. Despite all this original work, the Court found insufficient originality:

“The amount of original work done by plaintiff in the instant case, was in no way comparable to that done by the plaintiff in the [General Drafting Co.] case.

“. . . [the] map is not a valid subject of copyright. To be entitled to copyright, a composition must be the result of some original work.” (*Andrews v. Guenther Pub. Co.*, *supra*, at 557.)

4. The recent case of *Marken and Bielfeld, Inc. v. The Baughman Co.* (U. S. D. C. E. D. Va., 1957)\* is squarely in the line of map cases discussed earlier. Plaintiff's agent compiled a map by reducing United States Geological Surveys, placed certain towns thereon and drew in roads from various other published and public domain maps.

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\*The opinion in this case, Civil Action No. 2376, was obtained from the Clerk of the District Court, and counsel is unable to find any citation in the Federal Supplement.



In determining "whether the maps relied upon contained sufficient original work to be protected by copyright," the Court said:

" . . . the controlling principles were applied in *General Drafting Co. v. Andrews*, . . . *Andrews v. Guenther Pub. Co.*, . . . *Amsterdam v. Triangle Publications Inc.*, . . . and *Crocker v. General Drafting Co.*, . . . These appear to be leading cases upon the subject of the amount of originality required to meet the test as to whether the map is a proper subject of copyright. While it is not required that the compilation be the sole product of the maker in acquiring a reasonably substantial the compilation of information procured by others is required to make a map copyrightable. There must be originality resulting from the independent effort of the maker in acquiring a reasonable substantial portion of the information . . . As I view the evidence, [plaintiff] prepared his base map from material collected by others, with such omissions as he saw fit to serve the purpose desired. The reduction in size by the use of a mechanical instrument is not an original idea. The omission of towns, highways or other markings superfluous for his purpose is not an indication of originality. The free-hand location of highways between points does not constitute new information but merely the act of a draftsman in delineating such highways in a method suitable for his purpose. The record discloses no effort on his part to verify the correctness of the map by communicating with individuals or local agencies in the area affected . . . It is conceded that [plaintiff] made no personal inspection of any of the areas shown on the map. As indicated, the only significant changes made by [plaintiff] consisted of an adjustment of areas around Roanoke and Williamsburg,

first appearing on the 1951 map in order that those cities might be shown. Apparently this adjustment consisted only of a contraction or restriction of the portion of the outer edge of the map so as to bring into the picture these cities. It is therefore my conclusion that the map relied upon does not contain sufficient original work to be protected by the copyright."

**B. The Map Cases Relied Upon by Appellant, to the Extent That They Are Offered to Support the Proposition That a Valid Copyright May Be Obtained on a Map Copied Virtually Entirely From Public Domain Maps, Do Not Support Appellant's Position.**

1. Appellant relies upon the case of *Woodman v. Lydiard-Peterson Co.*, 192 Fed. 67 (C. C. Minn., 1912), *aff'd sub. nom. Lydiard-Peterson v. Woodman*, 204 Fed. 921 (8th Cir., 1913), in support of his position that a map maker may obtain a valid copyright where the information contained in his map is gathered from other publications, and not by direct observation (Appellant's Brief 11). It should be noted that even were this the holding of the *Woodman* case, which it is not, it is not a Court of Appeals decision, since the sole question on appeal was limited by stipulation of the parties to the question of the adequacy of the copyright notice (204 Fed. 921, 923). In the District Court, where the originality of Appellant's map-making was at issue (neither affirmed nor reversed on appeal), it appears that the plaintiff in *Woodman* performed far more original work than Appellant. Appellant quotes at some length, with emphasis, from the District Court opinion in *Woodman* (Appellant's Brief 11), but it appears that the opinion relies heavily for its decision for the plaintiff upon the fact that plaintiff, in fact, performed considerable original work. Im-

mediately following the excerpt from the District Court opinion in *Woodman* in Appellant's brief, appears the following language:

*"It is not true to say that it does not contain any original feature that had not appeared in any map prior to this time. It does contain quarter section lines. These, to be sure, are to some extent the same as those which had appeared in the Dahl Map; but that was accidental. They appeared in the Dahl Map because the boundaries of farms and tracts of land happened to coincide with the boundaries of the quarter sections. But an examination of the Dahl Map shows that, wherever the boundaries did not coincide with the quarter section line, then the quarter section lines were omitted. This is an original feature which the defendant availed himself of when he copied the map.*

*"The complainant in his testimony specified some 38 features which he says were original in his map and did not appear in any other map unless it was in the government map. It was suggested by counsel, as I understood him, that the complainant had a right to copyright features which appeared upon the government map and did not appear upon any other map. I do not understand upon what basis that contention was made. I find nothing in the law to sustain it. On the contrary, it appears from section 7 of the Act of March 4, 1909, that there is an express provision that no copyright shall be obtained of any government publication. Therefore, eliminating from the 38 items specified by the complainant all those which had formerly appeared on the government map, there still remain quite a number of original features, which, so far as the evidence shows, did not appear upon any other map. I think it specially appears that a part of a road near Holdridge did not appear upon*

the government map. The complainant also specified a lake in the southeast quarter of section 29, and said that the road across it was new. An examination of the government maps shows that to be the fact. While the government map does show two lakes, it shows no road across the narrowest point between them. Again, in section 1, town 116, the complainant testified that there was a road marked by a dotted line, which did not appear upon any other map. No evidence is produced to contradict that. So, in the northeast corner of the northwest quarter of section 35, town 117, there is a road on the section line; and I might go through the different specifications that complainant made and point out several more instances which were not contradicted by evidence of the defendant. *So I say that it is not true that there are no features at all in this map which are original with the complainant. These features are protected by the copyright.*" (*Woodman v. Lydiard-Peterson, supra*, at 69, 70.) (Emphasis added.)

2. The case of *General Drafting Co. v. Andrews*, 37 F. 2d 54 (2nd Cir., 1930), is also cited by Appellant (Appellant's Brief 12) for the proposition that original work is unnecessary in order to obtain a valid map copyright. But the court in the *Amsterdam* case did not hesitate to cite the *General Drafting Co.* case for the precise point of law upon which *Amsterdam* turned, to wit:

"To be copyrightable, a map must be the result of some original work, *Andrews v. Guenther, supra*; *General Drafting Co. v. Andrews . . .*" (*Amsterdam v. Triangle Publications, supra*, at 106.)

A close examination of the *General Drafting Co.* case seems to indicate that plaintiff there performed far more

original work than the Appellant in the case at bar. Indeed, *Amsterdam* is not the only case to point this out. In *Andrews v. Guenther, supra*, the *General Drafting Co.* case is referred to in support of the statement that:

“The cases in which copyrights on directories, digests, maps and other compilations have been upheld, all involved at least a modicum of creative work as distinguished from merely copying, which is entirely lacking from the case at bar.” (*Andrews v. Guenther, supra*, at 557.)

The court in the *General Drafting Co.* case outlined in detail the method by which plaintiff's map was created. It is important in this connection to note that plaintiff's maps were tourists' road maps designed for automobile drivers' use. It appeared that plaintiff obtained two sets of topographical maps from the Department of the Interior, and then obtained from personal interviews with county engineers in each county, detailed information concerning road conditions. Plaintiff then designated the condition of each road as a first, second or third class road insofar as automobile travel was concerned, and verified the actual physical condition of many of the roads by travel upon them. Then plaintiff took his assembled maps and proceeded, by a process of selection, to use only certain highways, towns, etc., as he thought would be of use to motorists. He then indicated the class of each road by a special marking and in order to accommodate the printed matter which he placed thereon, considerably varied road meanderings, shore lines, etc. The court concluded that:

“Comparison of base maps and sectional or detail maps with the finished product show a considerable amount of originality in preparation.” (*General Drafting Co. v. Andrews, supra*, at 56.)



C. The So-Called "Compilation" Cases Relied Upon by Appellant, Rest Upon the Performance of Considerably More Original Work and Variation Than Are Asserted in Appellant's Affidavit.

1. In the case of *Edwards Co. v. Boorman*, 15 F. 2d 35 (7th Cir., 1926), an interest and discount time teller was held to be a protectible work under the Copyright Statutes. An examination of the facts of the case seems to show, however, that the protected work was not a mere collection of previously published words, phrases and symbols, but was, in fact, held to be an original *book*, within the meaning of Section 5(a) of the Copyright Act and not, as claimed by Appellant, a "compilation, abridgement, adaptation, arrangement . . . or other version of words in the public domain" under the provisions of Section 7. It appears that the plaintiff in the *Boorman* case compared and arranged at some length a work furnishing, without computation, virtually all necessary information pertaining to time payments and discounts on commercial paper. Clearly, more original work was required than that performed by Appellant.

2. The case of *Hartfield v. Peterson*, 91 F. 2d 998 (2d Cir., 1937), is similarly distinguishable. There, the plaintiff, over several years, accumulated material from different codes and from various friends and associates. He wrote, rewrote, enlarged, amplified and expanded this material into a single cable and telegraphic code book, which included some 74,962 phrases, collected, interpolated and in many cases, apparently, originated by the plaintiff. There is hardly any basis for comparison of plaintiff's work in the *Hartfield* case and the work Appellant claims to have performed in this case.

3. The facts in the case of *New Jersey Motor List Co. v. Barton Business Service*, 57 F. 2d 353 (D. C. N. J., 1931) are inadequate to make any comparison. But it does appear that plaintiff, from lists of names, addresses and other information contained in applications to the State Division of Motor Vehicles, compiled its own list for advertising purposes, and it would appear that at least a considerable process of selection was involved, which would have required more effort and originality than in merely (and imperfectly) eliminating street names from published maps.

4. The case of *Hanson v. Jaccard Jewelry Co.*, 37 Fed. 202 (C. C. E. D. Mo., 1887) is similarly cited by Appellant (Appellant's Brief 8). The successful plaintiff in this case made a compilation of Civil War battles from "voluminous public documents" and arranged them chronologically and included the Union forces engaged in the battles and the casualties sustained. The plaintiff was sustained on grounds that such a compilation is a "valuable source of information and requires labor, care, and some skill in . . . preparation."

5. The case of *Chain Store Business Guide, Inc. v. Wexler*, 79 Fed. Supp. 726 (U. S. D. C. N. Y., 1948), relied upon by Appellant, similarly shows the exercise of considerable ingenuity, originality and selection not demonstrated by Appellant. Plaintiff in this case, from more than 1,800 telephone books, covering approximately 7,800 cities and towns throughout the United States, compiled business directories, classified as to particular trades.

" . . . names were secured in part from 1,816 telephone books covering approximately 7,800 cities and towns throughout the United States. A card index for each name appearing in any of its directories is kept by the plaintiff upon which is entered



not only the name and address, but other information including the names of the buyers for the stores, and this data is furnished for the use of its customers upon request, with changes of addresses, business names, etc., as and when such occurred. In addition thereto, forms of questionnaires or listings are sent to the various chains and independent stores at least once a year in which plaintiff requests further information such as headquarters address, number of stores in actual operation and also requesting that any errors in plaintiff's directory with respect to the particular chain or store be indicated so that correction may be made." (*Chain Store Business Guide v. Wexler*, at 726.)

That this is not only a greater degree of work than that performed by Appellant, but of a different kind entirely, is quite clear. The "compilation" cases underline the map cases which require considerable original work for copyrightability.

#### IV.

#### Conclusion.

On the basis of the facts set forth in Appellant's affidavit and the applicable principles of law, we respectfully submit that the judgment in this case should be affirmed.

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